

COMMUNICATION FROM JAPAN

The Negotiations on Trade in Services

The attached communication has been received from the delegation of Japan with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. According to the "Roadmap" adopted by the Special Session of the Council for Trade in Services in May 2000, which states "proposals would be submitted by Members by the end of December 2000", Japan hereby submits this proposal.

2. The proposal consists of two parts: "II. Japan's Position on How to Proceed with the Negotiations" and "III. The Significance of Liberalisation and Expectations from the Negotiations." In the procedural part, Japan's position is expressed, in a comprehensive manner, on various points concerning the negotiations, including those identified in paragraph 2(c) of the "Roadmap". The latter part provides, in an illustrative list, a number of issues in various sectors that are expected to be solved in the service negotiations.

3. As is expressed in paragraph 2(b) of the "Roadmap", flexibility is given to Members to make further or more detailed proposals in the future. Accordingly, Japan reserves its right to make further or more detailed proposals.

II. JAPAN'S POSITION ON HOW TO PROCEED WITH THE NEGOTIATIONS

4. Article XIX of the GATS stipulates, "In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations...with a view to achieving a progressively higher level of liberalisation". While Members need to pay due attention to other relevant provisions of the GATS, the achievement of "a progressively higher level of liberalisation" is the primary objective of the current negotiations.

5. Based on its experience as a net importer in the service trade, Japan has made its own assessment of trade in services (please see S/C/W/105, April 1999). According to our assessment,

- (a) the GATS and the multilateral negotiations on trade in services contribute to the expansion of trade in services through progressive liberalisation and greater transparency, and
- (b) the liberalisation and the expansion of trade in services contribute to the economic growth of Members regardless whether such Members are exporters or importers of the services trade.

6. Japan has been conducting analytical research on the relationship between the number of commitment of a Member and its economic growth, and the performance of its trade in services. From this research, we have found that the larger the number of commitments Members have, the higher the growth rates have been achieved with regard to the economy as a whole and the service industries as well as the growth of trade in services. Since the result of this analysis demonstrates the importance of the liberalisation of trade in services, Japan intends to submit to the Council for Trade in Services a paper concerning the results of this analysis. Japan hopes that the paper will contribute to facilitating the negotiations.

7. Based on the assessment given above, in the section "III. The Significance of Liberalisation and Expectations from the Negotiations", Japan explains, for some sectors, the significant impact of trade liberalisation of the sectors in the overall context of the economy as a whole. In the same section, Japan also raises a number of issues that are expected to be solved in achieving the objective of a progressively higher level of liberalisation. The issues listed are of an illustrative nature and are by no means exhaustive.

8. Some of the issues listed could be solved through negotiations on specific commitments regarding market access and national treatment. Others could be addressed through eliminating or reducing MFN exemptions, making additional commitments, or establishing disciplines on domestic regulations or on other GATS rules areas. Japan believes that a progressively higher level of liberalisation of Article XIX of the GATS will be achieved through these various types of negotiations.

9. Negotiating guidelines and procedures should be established pursuant to Article XIX of the GATS so that the development of the service negotiations is visible to the outside world. The negotiating guidelines should be established in the context of the overall situation in the WTO that leads to the launching of a new round of WTO negotiations. The negotiating guidelines should be developed in such a way that it enables the divergent interests of Members to be duly incorporated in the negotiating process.

A. NEGOTIATIONS ON SPECIFIC COMMITMENTS

(a) Scope

10. No sectors or modes of supply should be excluded *a priori*. The current service negotiations should aim at promoting the benefits of all Members, and at securing an overall balance of rights and obligations through the liberalisation of services across a broad range of sectors. In this light, the scope of negotiations should be comprehensive. As far as Japan is concerned, its keen interests are illustrated in "III. The Significance of Liberalisation and Expectations from the Negotiations".

11. The importance of the maritime transport services should be recognised. In fact, the maritime negotiations were suspended, leaving the commitments extremely limited and the principle of Most Favoured Nation treatment not being applied in this area. Recalling the joint statement on maritime negotiations (S/CSS/W/8) tabled in October by Japan and many other Members, Japan would like to encourage others to express their views on the maritime transport negotiations.

(b) Request and Offer: A Central Method

12. The central method of negotiations should be "request and offer" which fits comfortably with the notion of achieving a progressively higher level of liberalisation.

(c) Other Complementary Approaches

13. On the other hand, other possible ways to complement the "request and offer" approach should not be foreclosed. The following are some examples of such methods.

14. Some of the issues in section III can commonly be found in a number of sectors, for example:
- Restrictions on the participation of foreign capital
 - Nationality or residency requirements for executives and/or employees
 - Restrictions on the types of legal entity
 - Restrictions on overseas remittances, foreign exchange, and settlements
 - Domestic procurement requirements
 - (Regarding intra-company transfer in sectors with commitments to trade liberalisation in mode 3,) restrictions of the movement of senior management or personnel with high level of expertise, who are directly related to the supply of services.

Although some of the issues listed may not be addressed fully through negotiations on specific commitments, the consideration of possible ways of reducing such trade barriers of a cross-cutting nature will be worth exploring in terms of enhancing the efficiency of negotiations and the user friendliness of the GATS.

15. A way to encourage Members to expand their sectoral coverage of commitments, based on their economic development during the post Uruguay Round period, may also be worth being explored so that a progressively higher level of liberalisation in the services trade can be achieved. After having analysed the relationship between the liberalisation of trade in services and the economic growth of each Member, Japan is studying the possibility of reaching agreement among Members on a sectoral coverage of commitments based on the scale of the economy as well as the economic growth of each Member.

16. With respect to maritime transport, the progress of negotiations up to the suspension should be revitalised. In this light, the model schedule would be a useful tool.

(d) MFN Exemptions

17. The Most Favoured Nation principle is one of the most important pillars in realising trade liberalisation in a multilateral framework and one of the most fundamental principles of the WTO Agreement. Thus, an MFN exemption is a deviation from this important principle. Therefore, the elimination and reduction of MFN exemptions should be among the most important agenda in the current services negotiations. In this connection, the results of the MFN exemption review and the subsequent discussions on the general matters that have arisen from the review should be effectively utilised in the context of negotiations.

18. In our analysis of the MFN exemptions, we have found that some 10 per cent of the Members register more than half of the total exemptions. The exemptions are not evenly registered by different Members. Rather, a handful of Members register a large portion of the total exemptions. It is indispensable for those Members with many exemptions to make serious efforts to eliminate and reduce their exemptions. Japan shares with other Members the idea that all registered MFN exemptions should be eliminated by the end of 2004 or the conclusion of the current negotiations, whichever comes earlier.

B. AUTONOMOUS LIBERALISATION

19. An appropriate treatment for autonomous liberalisation needs to be considered so that the liberalisation process can be facilitated even between the periods of negotiations. An appropriate

recognition should be given to those measures that are liberalised autonomously and are notified to Members through, for instance, the Council for Trade in Services. It should be noted that, within the framework of the GATS, transparency and legal stability can be secured with respect to such autonomous liberalisation measures when they are bound and, through being bound, such measures will contribute to further expansion of trade in services.

C. INCREASING PARTICIPATION OF DEVELOPING COUNTRIES AND THE SPECIAL TREATMENT FOR LEAST DEVELOPED COUNTRIES

20. Japan supports a proposal that "Increasing the participation of developing country Members to negotiations" should be an agenda item for the Council for Trade in Services, where the concrete ways to assist those Members would be discussed. Japan attaches importance to assisting developing countries in their capacity building efforts with a view to achieving a progressively higher level of liberalisation and increasing their participation in world services trade.

21. Japan is also ready to look positively into liberalisation proposals that include progressive implementation or transition for least developed country Members. Special treatment should also be given to least developed country Members when negotiating methods of a multilateral and cross-cutting nature are to be considered.

D. ISSUES ARISING FROM THE WORK OF THE COUNCIL FOR TRADE IN SERVICES AND ITS SUBSIDIARY BODIES

22. Issues that Japan expects to be resolved through the current negotiations, which attempt to achieve a progressively higher level of liberalisation, include several matters under the on-going exercise, such as enhancing transparency and government procurement. Reflecting upon the work carried out so far by the Council for Trade in Services and its subsidiary bodies, rule-making exercise should proceed taking into due consideration the following points.

(a) Domestic Regulation

23. The establishment of a multilateral discipline should be targeted pursuant to Article VI:4 of the GATS, attaching particular importance to enhancing the transparency of the regulations. Such a discipline should aim to be of a horizontal nature, to the extent possible, recognising the right of Members to regulate.

(b) Safeguards

24. Consideration should be given to the question of how safeguard measures can be placed in the context of GATS negotiations that aim to achieve a progressively higher level of liberalisation. In this light, Japan will continue to make concrete contributions to the discussion of the Working Party on GATS Rules.

(c) Government Procurement

25. Each Member should recognise the significance of government procurement in trade in services. At the same time, since the Working Group on Transparency in Government Procurement has been working in a comprehensive manner including services, we need to proceed taking into account the work of this working group on transparency.

(d) Technical Review

26. Consideration should be given to the question whether a technical review for enhancing the clarity and legal stability of the GATS will be necessary, reflecting upon the previous discussions in

the Committee on Regional Trade Agreements and the Committee on Specific Commitments regarding such provisions as Articles V and XX:2 of the GATS.

E. RELATIONSHIP WITH A NEW ROUND

27. It is extremely important to promote the current services negotiations for the development of the world economy in the 21st century. However, given the diversity of interests of Members, successful results will not be achieved unless the multilateral negotiations are carried out in a well-balanced manner so that all participants can gain benefits. Therefore, a new round with a balanced and sufficiently broad-based agenda that responds to the interests of all Members should be launched expeditiously. And the services negotiations should be a part of this new round and also part of a single undertaking. The launching of such a new round is crucial in order to gain momentum in the services negotiations, facilitate the participation of Members, and, thereby, achieve fruitful results in the liberalisation of trade in services.

III. THE SIGNIFICANCE OF LIBERALISATION AND EXPECTATIONS FROM THE NEGOTIATIONS

A. PROFESSIONAL SERVICES

(a) Significance of Professional Services

28. As overseas business activities are expanding, there is an increasing need for professional knowledge to conduct business abroad smoothly. As a result, globalisation has become an important issue for professional services. However, each professional service is carried out by a professional with a specific qualification, such as a lawyer, an accountant, a patent attorney, an architect and an engineer. It should be noted that the scope for each profession varies from one country to another and each profession is subject to a specific discipline that is unique to each profession and country. Liberalisation in these sectors, therefore, needs to take into account the specific characteristics of the profession in question.

(b) Expectations from the Negotiations

29. The following are the basic obstacles which lawyers, patent attorneys, accountants, architects and engineers face when they conduct their business abroad. Those problems are expected to be improved while the unique characteristics of each profession being maintained.

- Nationality requirements
- Reciprocity on permissions of qualification
- Lack of legal framework for accepting professionals with foreign qualifications, or lack of internal consistencies of such a framework
- (In the architecture and engineering services,) prohibition of the establishment of offices and/or branches, restrictions on capital participation, joint business obligations and limitations on the total ratio of foreign business.

B. BUSINESS SERVICES OTHER THAN PROFESSIONAL SERVICES

(a) Significance of Business Services

30. Business services are playing an important role as the key infrastructure sectors, which are essential not only for services industries but also for other industries including manufacturing when

they expand their business overseas. Special attention should be given to advertising services, rental/leasing services, real estate services and computer and related services which are essential in the development of information technology. Liberalisation of those services are not only important for the smooth conduct of the respective service activities but also essential in assisting various kinds of business activities overseas.

(b) Expectations from the Negotiations

31. The removal of or improvement on the following restrictive measures are expected through the negotiations with regard to advertising services, rental/leasing services, real estate services and computer and related services.

- Restrictions on the participation of foreign capital
- Nationality and residency requirements for executives and employees
- Restrictions on the types of business operations permitted to the foreign service suppliers
- Domestic procurement requirements
- Requirements for export contribution
- Licensing limitations
- Administration management that lacks rationality, objectivity, and impartiality.

C. TELECOMMUNICATIONS SERVICES

(a) Significance of Telecommunications Services

32. Telecommunications services are becoming increasingly important due to the recent technological innovations in the information and communication sector. Basic telecommunication services play an essential role as the infrastructure for data communications as well as for voice telephone services. However, many Members retain limitations on the market access, providing their domestic companies with preferential treatment. Value added telecommunication services can expand their scope of activities infinitely due to the development of information and communication technology as well as electronic commerce. However, here too, many Members retain limitations on the market access.

33. Telecommunication services show a remarkable and rapid development of cross-border transactions compared with other services. Technologies can easily become obsolete unless seamless efforts are made to ensure that the most advanced technologies are incorporated into businesses. Therefore, Members, including developing country Members, need to encourage foreign service providers to participate in their domestic markets if they are to maintain the technology of their telecommunication services at the latest international level.

(b) Expectations from the Negotiations

34. Improvements are expected on the following issues. Such improvements will be necessary to ensure that the telecommunication services are provided with technologies at the latest international level.

- Exemptions of Most-Favoured-Nation Treatment in providing services

- Restrictions on the participation of foreign capital
- Unreasonably high licensing charges
- Quantitative limitation on new entrants
- Monopoly of business by state owned enterprises
- Nationality and residency requirements for board members and other management personnel
- Different regulations in sub-central governments
- Domestic procurement requirements.

35. The "Reference Paper" established through the negotiations on basic telecommunications is essential to ensure fair competition. Therefore, those Members that have not yet made commitments based on this document are highly encouraged to do so during the current negotiations.

D. AUDIO-VISUAL SERVICES

(a) Significance of Audio-visual Services

36. The liberalisation of audio-visual services is important for respecting the right of the citizens of each Member to free access to a variety of cultures and information. Audio-visual services have become remarkably important with the recent progress of information technology.

(b) Expectations from the Negotiations

37. In the audio-visual services, we expect the following issues to be improved through the current negotiations for the liberalisation of trade in services.

- Exemptions of Most-Favoured-Nation Treatment in providing services
- Quantitative limitations
- Deviations from the principle of national treatment.

E. CONSTRUCTION AND RELATED ENGINEERING SERVICES

(a) Significance of Construction and Related Engineering Services

38. Only a half of the Members have made commitments in this sector. From the perspective of long-term economic management, however, it is indispensable to ensure that those services are provided in the most efficient, least expensive, and safety-guaranteed manner, and, for this purpose, further liberalisation should be aimed at in this sector. Ensuring minimising the risks through utilising the most advanced technology is essential with regard to the construction and related engineering services, in particular when such services are devoted to the establishment of a cross-border network. Thus, the market access of foreign service suppliers needs to be ensured. It should also be noted that restrictions limiting the number of foreign service suppliers who have access to construction markets increase the construction cost. To achieve more efficient economic management, therefore, liberalisation is necessary in a wide range of construction and related engineering services.

(b) Expectations from the Negotiations

39. The scope of construction and related engineering services consist of a wide range of activities that are mutually related. Therefore, any barrier in a part of this sector may create difficulties in supplying the services of the sector as a whole. Thus, as far as this sector is concerned, the following problems need to be addressed as a package.

- Restrictions on the participation of foreign capital
- Restrictions limiting the types of legal entity
- Discrimination against foreign services suppliers
- Nationality requirements for executives and other employees
- Administration management lacking rationality, objectivity, and impartiality.

F. DISTRIBUTION SERVICES

(a) Significance of Distribution Services

40. The liberalisation of distribution services, i.e. commission agents' services, wholesale trade services, retailing services and franchising, has become an important issue not only for service-related companies but also manufacturers extending their activities overseas. Moreover, among various services sectors, the distribution services sector is the largest in scale in many countries in terms of the sectoral proportion in GDP and the numbers of employees. The effect of liberalisation in the distribution services is not limited to the widening of business opportunities for service providers. It will also benefit consumers through reduced costs and prices and increased levels of quality, when fair competition leads to further development of this sector. Thus, liberalisation in this sector is expected to push the growth of world economy.

41. However, few Members have made specific commitments in the distribution services. Those who have made commitments even in the one sub-sector of distribution are 36. This means that, of all the Members of WTO, more than two-thirds have not made any liberalisation commitments in this sector. Japan hopes that such state of commitments will be improved through the current services negotiations.

(b) Expectations from the Negotiations

42. Japan expects that the problems listed below, which our distribution service suppliers face, will be straightened out through the negotiations:

- Restrictions on the participation of foreign capital
- Nationality and residency requirements for executives and employees
- Restrictions on the types of legal entity
- Requirements for market-entry, such as export contribution requirements and local production requirements
- Discriminatory treatment against foreign companies

- Minimum capital requirements
- Lack of transparency and efficiency regarding the criteria and procedures of licensing.

43. With respect to the provision of distribution services by manufacturers, after-sales services are indispensable for the expansion of distribution services by manufacturers. Thus, when retail services are to be liberalised, it is important to liberalise such after-sales services as well. In the event of establishing companies that provide distribution services, land property acquisition is a key issue. It is necessary to reduce and eliminate limitations on land property acquisition, to establish clear criteria for permissions, and to increase the transparency of procedures.

G. FINANCIAL SERVICES

(a) Significance of Financial Services

44. Needless to say, among various services sectors, the financial services sector is, in particular, essential as the infrastructure for economic activities. From the viewpoint of enhancing operational predictability through lessening business risks, insurance services are extremely important not only for developed countries but also for developing countries striving for economic development. Regarding banking and securities services, it is necessary to establish a system where all types of related services are smoothly provided, which is conducive not only to the interests of individual firms through the diversification of funding methods and credit creation but also to alleviating country risks by stabilising the economy.

45. The last negotiation on financial services was concluded at the end of 1997 with the participation of 70 Members. If we include those Members that did not participate in this negotiation but had already made commitments in the field of financial services, some 100 Members have made some commitments at least.

(b) Expectations from the Negotiation

46. Japan hopes that the following restrictions, which are still maintained by a number of Members, will be improved through the current services negotiations:

- MFN exemptions
- Restrictions on the participation of foreign capital
- Restrictions on the forms of establishments
- Restrictions on the number and/or area of establishments
- Nationality and residency requirements for executives and employees, limitation on the number of foreign employees
- Mandatory outwards reinsurance obligations, monopoly by state insurance agencies
- Discriminatory tax treatment against foreign firms
- Limitation on certain business operations
- Arbitrary and opaque administration

- Different regulations across sub-central governments.

47. In addition, we hope that many Members will make commitments based on the "Understanding on Commitments in Financial Services", which indicates certain criteria for the liberalisation of restrictive measures specific to the area of financial services.

H. TOURISM SERVICES

(a) Significance of Tourism Services

48. With the technical progress in transport, communications and other relevant services, the number of overseas tourists in the world has been increasing rapidly in the past several years. In addition to non-business tourists, the international movement of business tourists is becoming more and more active with the globalisation of business activities.

49. In such circumstances, the liberalisation of hotel and restaurant services is important from the point of view of further economic growth through attracting non-business and/or business tourists from overseas. It is also desirable not to impose unnecessary restrictions on travel services (travel agencies services) for ensuring the smooth movement of non-business and/or business tourists.

50. The level of commitments on tourism services is generally higher than that of other services. However, many Members have not made commitments in the sector of tourist guide services (CPC 7472). A small number of Members have made commitments but with various restrictions. Thus, the level of commitments is comparatively low in this sector. As far as mode 3 of the hotel and restaurant services and travel services is concerned, some Members maintain such restrictions as an economic needs test, nationality and/or residency requirements and a limit on the participation of foreign capital.

(b) Expectations from the Negotiations

51. Given the viewpoint mentioned above, Japan expects further improvement on the following issues.

- Nationality requirements on tourist guides and/or attendants services
- Foreign capital and/or numerical restrictions on hotel and restaurant services.
- Overall restrictions on establishing a commercial presence providing travel services (travel agencies services)

I. TRANSPORT SERVICES

(a) Significance of Transport Services

52. The transport services are an important sector that underpins trade in goods. They also facilitate trade in other service sectors, such as distribution and tourism services. Furthermore, they play indispensable roles in consumption abroad (mode 2) and the movement of natural persons (mode 4) as well. Thus, the transport services are providing an infrastructure for liberalisation in trade in general including the trade in goods and services. In this context, the achievement of the liberalisation of the transport services is an important agenda for Members during the current negotiations on trade in services.

53. The level of commitments on transport services is generally low. With regard to international maritime transport and maritime auxiliary services, Members could not reach agreement in the

Uruguay Round and its successive negotiations, and, therefore, the current commitments are still very limited. With reference to land transport services, many Members do not make commitments, and the level of existing commitments is extremely low especially in the field of railway transport. Concerning air transport services, although the level of commitments on aircraft repair and maintenance services is somewhat higher than that of other transport services, many Members have not made commitments on the selling and marketing of air transport services or on the CRS services.

(b) Expectations from the Negotiations

(i) *Maritime transport services*

54. In spite of the efforts made during the Uruguay Round and its successive negotiations, maritime transport services negotiations were suspended in 1996, virtually leaving the almost entire sector out of the scope where the main principles of the GATS apply.

55. Japan considers that substantial negotiations on maritime transport services should start as soon as possible according to the Decision adopted by the Council for Trade in Services in 1996, which refers to the resumption of the negotiations "with the commencement of comprehensive negotiations on services."

56. In this context, Japan, together with the EC; Hong Kong, China; Korea; Norway and Singapore submitted a joint statement (S/CSS/W/8) on the negotiations on maritime transport services to the Special Session of the Services Council in October, and stressed the importance of the negotiations on this sector.

57. As stated in the joint statement, we look forward to real and meaningful liberalisation and commitments during the course of the negotiations.

58. In order to efficiently proceed with the current negotiations, Japan believes that the previous results of the UR and its successive negotiations should not be discarded. In this regard, Japan believes that the model schedule discussed during the last negotiations would still be an effective tool for the new negotiations. The negotiations should be conducted based on the three pillars established last time, namely, international maritime transport, maritime auxiliary services, and access and use of services at ports. Intermodal transport should be appropriately considered as well.

59. Japan expects that the obstacles for business activities in the international maritime transport sector, such as those mentioned below, should be removed or reduced through the negotiations.

- Restrictions on the participation of foreign capital
- Measures that favour national flag vessels and national companies
- Restrictions of new entrants
- Restrictions on specific types of legal entity
- Measures lacking rationality, objectivity and impartiality.

(ii) *Air transport services*

60. Japan expects that the following obstacles could be removed or reduced through the negotiations.

- Restrictions on the participation of foreign capital and/or residency requirements on aircraft repair and maintenance services
- Reciprocity on the selling and marketing of air transport services and on CRS services.

(iii) *Land transport services*

61. Liberalisation on land transport services is an important issue not only for such services providers as transport and distribution services but also for manufacturers that extend their activities abroad. Liberalisation on the land transportation of cargo is badly needed. Japan expects that the following issues could be tackled and improved through the negotiations.

- Restrictions on the participation of foreign capital
 - Restrictions on the types of legal entity
 - Numerical restrictions
 - Measures that favour the providers of road transportation services of certain Members.
-